

ELIZABETH W. KARPEH-WREH, by and through her husband, PHILIP WREH, and CHARLES C. MONGER, Appellants, v. BERTHA W. BAKER-AZANGO, by and through her husband, ROBERT G. W. AZANGO, and HON. ALFRED L. WEEKS, Circuit Judge, Sixth Judicial Circuit, Montserrado County, Appellees.

APPEAL FROM RULING OF JUSTICE PRESIDING IN CHAMBERS DENYING A WRIT OF ERROR TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 7, 1967. Decided January 19, 1968.

1. When a writ of possession, pursuant to judgment, has been executed and proof of execution filed more than two months prior to an application for a writ of error, the judgment will be deemed fully satisfied, and the petition must fail on that score.
2. A party to an action in which an arbitration award was confirmed and judgment entered thereon, has not been deprived of a constitutional right to trial by jury, since provision is made for such procedure in the Civil Procedure Law, 1956 Code 6:1286.
3. When four days have elapsed between the rendering of the arbitration award and the entry of judgment thereon, plaintiffs in error are deemed to have had a sufficient time to interpose objections to the award, and a contention that the brevity of time, as alleged, deprived them of a right, lays no groundwork for the issuance of a writ of error.

After judgment against defendants upon an award in arbitration proceedings involving title to real property, a writ of error was applied for, claiming *inter alia*, insufficiency of time to protest the arbitration award and denial of trial by jury in confirmation of the award. On appeal from ruling of the Justice presiding in chambers denying the application by the plaintiffs in error, the *ruling* was *affirmed* and the *petition* for the writ of error *denied*.

G. P. Conger-Thompson for appellants. *Richard A. Diggs* for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

Petition for a writ of error was filed by plaintiffs in error in the chambers of the presiding Justice who ordered the alternative writ of error issued and served, commanding the defendants in error to appear and to show cause, if they so desired, why the peremptory writ of error as prayed for should not be granted.

In response thereto, the defendants in error appeared and filed their answer.

Before considering the merits or demerits of the contending parties as contained in the petition and the return, we shall turn to the record in the trial court. Plaintiff in the court below, Bertha W. Baker-Azango, by and through her husband, instituted an action of ejectment against Elizabeth W. Karpeh-Wreh, by and through her husband Philip Wreh, and Charles C. Monger, for the recovery of a certain parcel of land described as containing three-fourths ($\frac{3}{4}$) acre of land, known as block #1, situated, lying and being on Bushrod Island, City of Monrovia. The defendants, having been summoned, filed their appearance in the office of the clerk of the trial court and subsequently filed their answer. The pleadings progressed as far as the surrejoinder.

It would appear that the parties in the above-entitled action jointly applied for a board of arbitration to be set up to settle the dispute in relation to the claim of the plaintiffs as against the denial of defendants. Accordingly, the court having acceded to the joint prayer of the parties for the appointment of arbitrators, the following named persons, or surveyors, were commissioned to perform said duty: J. F. Dunbar, chairman, Lawrence K. Boyah, for plaintiffs, and Jimmie K. T. Scotland, for defendants.

After having qualified, the board met and summoned

all parties concerned, and after discussion they surveyed the disputed area with the cooperation of the parties concerned. On January 22, 1965, the board tendered its final report, along with the award, which award the clerk was ordered to read and file as part of the record in this case. On January 28, 1965, the trial judge rendered final judgment on the award of the arbitrators, which follows:

"The signatures of the arbitrators having been established as their genuine signatures and handwriting and their having made an award to plaintiff, Bertha Baker-Azango, which includes portion of defendant's copy, shaded yellow in the plot, with a house shaded red, and finding that the deed of Mrs. Azango was probated on the 22nd day of September, 1964, (1954), and was registered in vol. 67, page 139, and that the deed of the defendant, Elizabeth W. Karpeh, was probated and registered on March 24th, 1958, in vol. 80, pages 75-76, and that these parcels of land were sold by Mr. Henry B. Logan, Bushrod Island, Montserrado County, and the board of arbitrators being of the opinion that Mrs. Bertha Azango is correct as indicated on the attached plot, it is, therefore, adjudged that the award be and the same is hereby confirmed and affixed and the property in question is by this judgment awarded to the plaintiff in this case, and the clerk of this court is to issue from under his hand and seal of court, a writ of possession and place same in the hand of the Sheriff to put the plaintiff in possession of her land, and it is hereby so ordered.

"Given under my hand in open court this 28th day of
January, 1965.

"[Sgd.] A. L. WEEKS,
Circuit Judge.

The arbitrators rendered their report on January 22, 1965, whereupon judgment was rendered on January 28, 1965. From January 22, 1965, when the arbitrators filed

their report, to January 28, 1965, when final judgment was rendered, gave plaintiffs in error sufficient time to file objections to the award, the subject of the proceedings, if they so desired. Their contention that they did not have an opportunity to file objections to the arbitrators' award in these proceedings is unmeritorious, to which this Court will not give credence.

They further contend in their answering affidavit that the judgment entered in the case was decided against plaintiffs in error and, hence, they were by law responsible to pay the costs they have not paid. It is more than strange for plaintiffs in error to raise such a contention. In the judgment of the trial judge we observed that no mention was made of costs. We must not forget that costs should be awarded to the prevailing party and it was within the province of the plaintiffs who prevailed in the case to have raised this issue and not the losing party. Further, the omission to assess costs by the trial judge in his judgment in these proceedings is considered as being the disallowance of costs by implication; therefore, the contention of the plaintiffs in error that costs in these proceedings have not been paid is untenable.

In count six of their assignment of errors, plaintiffs in error stressed the point of their constitutional rights because the trial judge failed to empanel a jury to dispose of the arbitrators' award in these proceedings. This contention at first blush would seem reasonable and consistent with the law controlling ejectments, but the following statute disposed of the contention.

“Effect of award.—In any action upon an award in an arbitration had on order of a court the reference and signature of the arbitrator must be proved. After judgment has been entered upon an award, it shall have the same status as a verdict and shall be proof of the facts stated therein against all parties to the arbitration.” Civil Procedure Law, 1956 Code, Tit. 6, § 1286.

The writ of possession was issued on April 21, 1965, over the signature of John B. P. Morris, clerk of the Circuit Court, Montserrado County, and return thereto was made by the Sheriff of Montserrado County, which reads as follows:

“On May 6, 1965, I placed Mrs. Robert G. W. Azango in possession of the parcel of land named in the within writ of possession and now make this as my official return to the office of the clerk of court.

“Dated this 7th day of May, 1965.

“[Sgd.] JAMES W. BROWN,
Sheriff, Montserrado County.”

Since the writ of possession was served on May 7, 1965, and the petition of the plaintiff in error was filed on July 19, 1965, more than two months subsequent to the service of the writ of possession, it is clear that the judgment of the trial court has been fully executed and there is nothing left to be done by the trial court in carrying out its judgment.

Wherefore, in view of the foregoing, the ruling of the Justice in Chambers in these proceedings is hereby affirmed, with costs against appellants. And it is hereby so ordered.

Affirmed.